

## **DEED OF GUARANTEE**

A Deed of Guarantee is a document where one person agrees to be responsible for someone else's mortgage obligations if that person fails to carry out their own obligations.

It is usually used when a lender has reservations about the ability of a borrower to repay mortgage instalments and requires another, usually more financially secure person, to guarantee the loan.

## DRAFT OF DEED OF GUARANTEE

THIS DEED OF GUARANTEE executed on the day of Two Thousand:

BY:

(hereinafter referred to as the "FIRST PARTY", which expression shall, wherever the context so requires or admits, mean and include, his heirs, executors, administrators and assigns).

IN FAVOUR OF:

(Here in after referred to as the "SECOND PARTY", which expression shall, wherever the context so requires or admits, mean and include, its successors-in-title and assigns)

WITNESSES AS FOLLOWS:

I. WHEREAS by an Agreement dated .....20\_\_\_, the Second Party has arrived at an arrangement to contribute its effort and economic strength in the development being done by M/s. \_\_\_\_\_ of the Property bearing No. \_\_\_\_\_, in terms set out therein;

II. WHEREAS a copy of the said Agreement is hereto annexed and marked as Annexure 'A';

III. WHEREAS the First Party is one of the Partners/Directors of \_\_\_\_\_ and apart from the assurances given by M/s. \_\_\_\_\_ the First Party herein has agreed to personally guarantee the performance and returns estimated of M/s. \_\_\_\_\_ under the said Agreement, failing which the First Party will make good the amounts guaranteed hereunder and the Parties hereto are desirous of recording the terms of the guarantee;

IV. NOW THIS DEED OF GUARANTEE WITNESSES AS FOLLOWS:

1. In the premises aforesaid and at the request of the Second Party, the First Party hereby agrees with and guarantees the Second Party the payment assured to the Second Party under the Agreement dated....20\_\_\_ by M/s. \_\_\_\_\_ and in the event of the Second Party not receiving the amounts in terms of the Agreement dated.....20\_\_\_, irrespective of any reasons from M/s. \_\_\_\_\_ the First Party Mr. \_\_\_\_\_ hereby irrevocably and unconditionally agrees and covenants to pay to the Second Party the amounts to be received by the Second Party in terms of the annexed Agreement or any part or parts thereof with interest thereon as aforesaid and as set out in the Agreement dated \_\_\_\_ 20\_\_\_ between the Second Party and M/s. \_\_\_\_\_ upon demand in that behalf being made by the Second Party;

2. The First Party further agrees as follows:-

a. A notice of demand issued by the Second Party or on its behalf stating that any of the sums under the annexed Agreement dated....20\_\_ have become receivable, in terms of the said Agreement dated ....20\_\_ and that M/s.\_\_\_\_\_ have failed or neglected in its assurances and failure of the Second Party receiving the said sum or any part thereof or any interest thereon as agreed, shall be conclusive and binding on the First Party as to that fact and without any further proof. The First Party shall make payment hereunder to the Second Party without any demur or default or without any recourse or reference to M/s.\_\_\_\_\_ as the case may be.

b. The First Party further agrees to pay the amounts mentioned hereunder or any part thereof as the case may be, notwithstanding that there may be any dispute or difference between the Second Party and M/s.\_\_\_\_\_ as to whether or not the said sums under the Agreement dated...20\_\_ or any part thereof and interest thereon as aforesaid or any part thereof has or has not become due and receivable by the Second Party;

c. The First Party agrees that this Guarantee is in addition to and without prejudice to the existing security offered by and on behalf of M/s.\_\_\_\_\_ to the Second Party and that all rights and remedies in respect thereof be reserved;

d. The First Party agrees that this guarantee shall be a continuing guarantee and shall not be considered as wholly or partially satisfied or exhausted by any part received by the Second Party or any settlement of account between the Second Party and M/s.\_\_\_\_\_.

e. The First Party agrees that this guarantee shall continue and be in force notwithstanding the discharge of M/s.\_\_\_\_\_ by operation of any law or insolvency /bankruptcy/winding up/ dissolution of M/s.\_\_\_\_\_ and shall cease only on payment of amount guaranteed hereunder either by M/s.\_\_\_\_\_ or the First Party herein;

f. The First Party shall have no right to the benefit of any other security that may be held by the Second Party until the Second Party receives all the amounts in respect of the monies and of all other claims under the said Agreement dated. ...20\_\_ and on any account whatsoever arising out of the said Agreement dated ....20\_\_ shall have been fully satisfied;

g. The First Party agrees that the Second Party under notice to the First Party, shall be at liberty to take other securities for the said monies due to the Second Party or any part thereof and to release or forbear to enforce all or any of the Second Party's remedies upon or under such securities and any collateral security or securities now held or be held by the Second Party and that no such release or forbearance as aforesaid shall have the effect of releasing the First Party from his liability or of prejudicing the Second Party's rights against the First Party under this Guarantee provided the notice mentioned herein above has been duly served on the First Party;

h. The First Party shall have no right to the benefit of any other security that may be held by the Second Party until the Second Party receives all the amounts in respect of the monies and of all other claims under the said Agreement dated....20\_\_ and on any account whatsoever arising out of the said Agreement dated .....20\_\_ shall have been fully satisfied and in respect of the amounts from M/s.\_\_\_\_\_, this Guarantee shall come to an end and in the event of the First Party paying under this Guarantee, the First Party shall be entitled to the security held by the Second Party at the time of total discharge;

3. The First Party agrees that demand for payment under this Guarantee shall be deemed to have been given to the First Party if made in writing and delivered at his address hereunder written and if sent by post shall be deemed to have been received by the Second Party 24 hours after posting thereof and in proving such services it shall be sufficient to prove that the letter containing the demand was properly addressed and put into post;

NAME: \_\_\_\_\_

Address for Notice:

4. It is agreed that this Guarantee shall be enforceable notwithstanding any change in the name of the Second Party Company and it shall ensure for the benefit of any company with which the Second Party may become amalgamated or to which the Second Party may assign its rights;

5. It is agreed that this Guarantee shall remain in force until the performance assured by M/s. \_\_\_\_\_ under the Agreement dated....20\_\_ have been fulfilled and complied in terms thereof;

6. The First Party agrees that it shall not be discharged or released from this Guarantee by any arrangement made between the Second Party and M/s. \_\_\_\_\_ notice to him in writing with regards to any additional security given by M/s. \_\_\_\_\_ and/or M/s \_\_\_\_\_, or release of any security at present given or may be given in addition nor will the First Party be discharged or released from this Guarantee by any alterations in the obligations save and except the quantum and returns agreed to be paid by M/s. \_\_\_\_\_, to the Second Party undertaken by M/s. \_\_\_\_\_ or by any forbearance or waiver by the Second Party whether as to payment, time of performance or otherwise under notice to the First Party in writing. The First Party agrees that the reasons for such notice as set out in this Para is only for information and not to seek consent of the First Party;

IN WITNESS WHEREOF, the FIRST PARTY has executed this DEED OF GUARANTEE in the presence of the Witnesses attesting hereunder:

WITNESSES:

1)

FIRST PARTY

2)